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U.S. Application No. 09/752,267 Art Unit 2614
Submission of Amendment with RCE in Response to October 5, 2005 Final Office Action

REMARKS

In response to the final Office Action dated October 5, 2005, the Assignee respectfully requests continued examination and reconsideration based on the above claim amendments and the following remarks. The Assignee respectfully submits that the pending claims distinguish over the cited documents.

The United States Patent and Trademark Office (the "Office") rejected claims 10, 15, 16, and 19 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,240,555 to Shoff *et al.* Claims 1-4, 6-7, and 30-32 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of U.S. Patent 5,917,481 to Rzeszewski *et al.* Claim 5 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of *Rzeszewski* and further in view of Published U.S. Patent Application 2002/0073424 to Ward *et al.* Claims 8-9 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of *Rzeszewski* and further in view of U.S. Patent 6,008,802 to Iki *et al.* Claims 13-14 and 24-27 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of *Iki*. Claims 11 and 17 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of U.S. Patent 6,326,982 to Wu *et al.* Claim 33 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of *Rzeszewski* and further in view of *Wu*. Claims 20-23 and 28-29 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of U.S. Patent 6,597,405 to Iggersund. The Assignee shows, however, that the pending claims are neither anticipated nor obviated by the cited documents. The Assignee thus respectfully submits that the pending claims distinguish over the cited documents.

Rejections under 35 U.S.C. § 102

The Office rejects claims 10, 15, 16, and 19 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,240,555 to Shoff *et al.* A claim is anticipated only if each and every element is found in a single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th

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Edition) (hereinafter “M.P.E.P.”). As the Assignee shows, the amended claims patentably distinguish over *Shoff*. The reference to *Shoff* does not anticipate the claims, so the Assignee respectfully requests that Examiner Ma to remove the 35 U.S.C. § 102 (e) rejection.

Exemplary embodiments describe data tags. A data tag is added to an end of a program description in electronic programming guide data. Support for such features may be found at least at page 20, lines 14-15. Claim 10, for example, is reproduced below.

10. (Currently Amended) A method of distributing tagged programming, comprising:

communicating electronic program guide data via a communications network;
and
communicating a data tag that has been added to an end of a program description in the electronic program guide data, the data tag comprising a command and a parameter, the command comprising an instruction to send a control instruction to a consumer electronics device.

Independent claim 16, reproduced below, recites similar features.

16. (Currently Amended) A method of receiving tagged programming, comprising:

receiving electronic program guide data;
receiving a data tag that has been added to an end of a program description in the electronic program guide data, the data tag comprising a command and a parameter;
stripping the data tag from the electronic program guide data; and
communicating the command and the parameter to a consumer electronics device.

The reference to *Shoff* does not anticipate the claims. Examiner Ma is correct — *Shoff* communicates a “target specification” with EPG data. Yet no where does *Schoff* describe adding this target specification “*to an end of a program description in electronic programming guide data*,” as claims 10 and 16 recite. The patent to *Schoff et al.*, in fact, fails to describe where the target specification is located within the electronic programming guide. *Schoff*, then, cannot

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anticipate adding a date tag “*to an end of a program description in electronic programming guide data.*” Because *Shoff* is silent to such features, the patent to *Shoff* cannot anticipate claims 10, 15, 16, and 19. The § 102 rejection must, therefore, be withdrawn.

Rejection of Claims under § 103 (a) over Schoff in view of Rzeszewski

Claims 1-4, 6-7, and 30-32 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of U.S. Patent 5,917,481 to *Rzeszewski et al.* If the Office wishes to establish a *prima facie* case of obviousness, three criteria must be met: 1) combining prior art requires “some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill”; 2) there must be a reasonable expectation of success; and 3) all the claimed limitations must be taught or suggested by the prior art. DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2143 (orig. 8th Edition) (hereinafter “M.P.E.P.”).

Claims 1-4, 6-7, and 30-32 are not obvious. Independent claims 1 and 30 each recite features not taught or suggested by the proposed combination of *Shoff* and *Rzeszewski*. Both independent claims 1 and 30, for example, recite adding a date tag “*to an end of a program description in electronic programming guide data.*” As this response above explains, the proposed combination of *Shoff* and *Rzeszewski* fails to teach or suggest such features. One of ordinary skill in the art, then, would not find independent claims 1 and 30 obvious over *Shoff* in view of *Rzeszewski*. Because the proposed combination of *Shoff* and *Rzeszewski* is silent to adding a date tag “*to an end of a program description in electronic programming guide data,*” the *prima facie* case for obviousness must fail. The § 103 rejection, therefore, must be withdrawn.

Dependent claims 2-4, 6-7, and 31-32 are, likewise, not obviated. Because these claims depend from their respective base claims 1 and 10, the dependent claims incorporate the same distinguishing features. Moreover, each of these dependent claims recites additional features not taught or suggested by *Shoff* and *Rzeszewski*. Claim 2, for example, recites “*wherein the data*

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tag comprises an ASCII character that prevents display of the data tag in the program.” Claim 3 recites “wherein the data tag comprises a command to add a reminder to a calendar application.” Claim 4 recites “wherein the data tag comprises a command to add a reminder to an external calendar application.” Claim 6 recites “wherein the data tag comprises a command and a start offset, the start offset having a negative value to indicate the command becomes active before a start time for the program.” Claim 7 recites “wherein the data tag comprises a single entry having a command with multiple pairs of a start offset and a duration, with each paired start offset and duration identifying commercial programming, and the command muting the commercial programming.” Because Schoff and Rzeszewski are completely silent to these features, the § 103 rejection of these dependent claims must also be withdrawn.

Rejection of Claim 5 under § 103 (a)

Claim 5 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of *Rzeszewski* and further in view of Published U.S. Patent Application 2002/0073424 to *Ward et al.* Claim 5, however, depends from claim 1 and, thus, incorporates the same distinguishing features. Moreover, dependent claim 5 recites additional features not taught or suggested by *Schoff*, *Rzeszewski*, and *Ward*. Claim 5, for example, recites “*wherein the data tag begins and ends with a predetermined ASCII character.*” Because *Schoff*, *Rzeszewski*, and *Ward* are completely silent to these features, the § 103 rejection of dependent claim 5, therefore, must be withdrawn.

Rejection of Claims 8 & 9 under § 103 (a)

Claims 8-9 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of *Rzeszewski* and further in view of U.S. Patent 6,008,802 to *Iki et al.* Claims 8-9, however, also depend from claim 1 and, thus, incorporate the same distinguishing features. Moreover, dependent claims 8 and 9 each recite additional features not taught or suggested by *Schoff*, *Rzeszewski*, and *Iki*. Claim 8, for example, recites “*wherein the data tag comprises a command mute a ringer on a telephony device.*” Claim 9 recites “*wherein the data tag comprises*

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a command to mute programming that exceeds a parental control rating.” Because Schoff, Rzeszewski, and Iki are completely silent to these features, the § 103 rejection of dependent claims 8 & 9, therefore, must be withdrawn.

Rejection of Claims 11 & 17 under § 103 (a)

Claims 11 and 17 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of U.S. Patent 6,326,982 to *Wu et al.* Claims 11 and 17, however, are dependent their respective independent base claims 10 and 16 and, thus, incorporate the same distinguishing features. As this response above explained, no where does *Schoff* and *Wu* describe adding a data tag “*to an end of a program description in electronic programming guide data,*” as claims 10 and 16 recite. Moreover, dependent claims 11 and 17 each recite additional features not taught or suggested by *Schoff* and *Wu*. Dependent claim 11, for example, recites “*wherein communicating the data tag comprises communicating an ASCII character that prevents display of the data tag in the electronic programming guide data.*” Claim 17 recites “*wherein receiving the data tag comprises receiving an ASCII character that prevents display of the data tag in the electronic programming guide data.*” Because *Schoff* and *Wu* are completely silent to these features, the § 103 rejection of dependent claims 11 and 17 must be withdrawn.

Rejection of Claim 33 under § 103 (a)

Claim 33 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of *Rzeszewski* and further in view of *Wu*. Claim 33, however, depends from independent claim 30 and, thus, incorporates the same distinguishing features. Moreover, dependent claim 33 recites additional features not taught or suggested by *Schoff*, *Rzeszewski*, and *Wu*. Claim 33, for example, recites “*instructions for receiving the data tag as a single entry having a command with multiple pairs of a start offset and a duration, with each paired start offset and duration identifying commercial programming, and the command muting the commercial programming.*” Because *Schoff*, *Rzeszewski*, and *Wu* are completely silent to these features, the § 103 rejection of dependent claim 33 must be withdrawn.

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Rejection of Claims 20-23 & 28-29 under § 103 (a)

Claims 20-23 and 28-29 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Shoff* in view of U.S. Patent 6,597,405 to *Iggulden*. These claims, however, are dependent their respective independent base claims 16 and 1 and, thus, incorporate the same distinguishing features. Moreover, each of these dependent claims recites features not taught or suggested by *Schoff* and *Iggulden*. Claim 20, for example, recites “*wherein the step of receiving the data tag comprises receiving a predetermined ASCII character that indicates a beginning and an end of the data tag.*” Claim 21 recites “*wherein the step of receiving the data tag comprises receiving a command and a start offset, the start offset having a negative value to indicate the command becomes active before a start time for a program.*” Claim 22 recites “*wherein the step of receiving the data tag comprises receiving a single entry having a command with multiple pairs of a start offset and a duration, with each paired start offset and duration identifying commercial programming, and the command muting the commercial programming.*” Claim 23 recites “*wherein the step of receiving the data tag comprises receiving a command to mute a ringer on a telephony device.*” Claim 28 recites “*setting a reminder for a calendar application.*” Claim 29 recites “*receiving a reminder for a calendar application.*” Because *Schoff* and *Iggulden* are completely silent to these features, the § 103 rejection of dependent claims 20-23 and 28-29 must be withdrawn

If any questions arise, the Office is requested to contact the undersigned at (919) 387-6907 or scott@wzpatents.com.

Respectfully submitted,



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